

SENATE BILL No. 666

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-1-6; IC 34-6-2; IC 34-30; IC 34-51; IC 34-57-5; IC 34-57-6.

Synopsis: Civil liability for year 2000 problems. Specifies that an exchange in good faith of information related to year 2000 problems is not an unlawful restraint of trade. Limits class action lawsuits related to year 2000 problems to classes in which each member has damages exceeding \$50,000 or in which the defendant is a manufacturer or vendor of a product that inaccurately processes date data. Gives officers and directors of a business immunity from civil liability resulting from a year 2000 problem if the business exercised due diligence in mitigating year 2000 liability. Gives creditors and fiduciaries immunity from civil liability resulting from the failure of a business to exercise due diligence or to be year 2000 compliant.
(Continued next page)

Effective: January 1, 1999 (retroactive).

Lubbers

January 22, 1999, read first time and referred to Committee on Judiciary.



C
o
p
y

Digest Continued

Specifies that the damages available in a civil action involving a year 2000 problem are limited to the damages allowed by a contract applicable to the person incurring the loss or compensatory damages for pecuniary losses. Prohibits punitive damages in a cause of action related to a year 2000 problem. Provides for arbitration and mediation of disputes related to a year 2000 problem. Makes other changes.

C
o
p
y



Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 666

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-1-6 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 1999 (RETROACTIVE)]:

4 **Chapter 6. Exchange of Information; Year 2000 Problems**

5 **Sec. 1. Neither IC 24-1 nor any other law prohibits a business**
6 **(as defined in IC 34-6-2-17) from exchanging information with any**
7 **other person concerning measures that are taken in good faith (as**
8 **defined in IC 34-6-2-64) in order for a business (as defined in**
9 **IC 34-6-2-17) to become year 2000 compliant (as defined in**
10 **IC 34-6-2-152). An exchange of information under this section may**
11 **not be construed to be a combination or other act in restraint of**
12 **trade under IC 24-1 or any other law.**

13 SECTION 2. IC 34-6-2-34.7 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
15 JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 34.7. "Due diligence in**

1999

IN 666—LS 8076/DI 51+



mitigating year 2000 liability", for purposes of this title, refers to an act described in IC 34-30-20.

SECTION 3. IC 34-6-2-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:
Sec. 17. "Business":

(1) for purposes of IC 34-42, means each business, bank, industry, governmental entity, profession, occupation, and calling of every kind; **and**

(2) **for the purposes of a provision of this title other than IC 34-42, means each business, bank, industry, profession, occupation, and calling of every kind, other than a governmental entity.**

SECTION 4. IC 34-6-2-45 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:
Sec. 45. (a) "Fault", for purposes of IC 34-20, means an act or omission that is negligent, willful, wanton, reckless, or intentional toward the person or property of others. The term includes the following:

(1) Unreasonable failure to avoid an injury or to mitigate damages.

(2) A finding under IC 34-20-2 (or IC 33-1-1.5-3 before its repeal) that a person is subject to liability for physical harm caused by a product, notwithstanding the lack of negligence or willful, wanton, or reckless conduct by the manufacturer or seller.

(b) "Fault", for purposes of IC 34-51-2 **and IC 34-51-6**, includes any act or omission that is negligent, willful, wanton, reckless, or intentional toward the person or property of others. The term also includes unreasonable assumption of risk not constituting an enforceable express consent, incurred risk, and unreasonable failure to avoid an injury or to mitigate damages.

SECTION 5. IC 34-6-2-64 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:
Sec. 64. "In good faith", for purposes of IC 34-30-15 **and IC 34-30-20**, refers to an act taken:

(1) without malice;

(2) after a reasonable effort to obtain the facts of the matter; and

(3) in the reasonable belief that the action taken is warranted by the facts known.

SECTION 6. IC 34-6-2-152 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 152. "Year 2000 compliant", for purposes of this title, means that all software, firmware, microcode, hardware, and embedded chips that are used**



by a person and that create, read, write, calculate, compare, sequence, or otherwise process data that consists of:

(1) a date; or

(2) both a date and time;

perform these functions accurately.

SECTION 7. IC 34-6-2-153 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 153. "Year 2000 problem", for the purposes of this title, means injury or another loss that results from the failure of a business or another person on which the business relies to be year 2000 compliant.**

SECTION 8. IC 34-24.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:

ARTICLE 24.5. CLASS ACTIONS

Chapter 1. Year 2000 Problems

Sec. 1. A class action may be maintained against a business for a year 2000 problem only if:

(1) the class action:

(A) involves the business as a manufacturer or vendor of software, firmware, microcode, hardware, or embedded chips that create, read, write, calculate, compare, sequence, or otherwise process data that consists of dates, times, or both dates and times; and

(B) a party to the proceeding presents facts that indicate that the business represented that the software, firmware, microcode, hardware, or chips were year 2000 compliant; or

(2) subdivision (1) does not apply and the amount of the pecuniary loss incurred by each member of the class is at least fifty thousand dollars (\$50,000).

SECTION 9. IC 34-30-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:

Chapter 20. Officer and Director Liability; Year 2000 Problems

Sec. 1. Due diligence in mitigating year 2000 liability consists of doing both of the following:

(1) Assessing, before September 1, 1999, whether a business has a year 2000 problem.

(2) Based on the assessment described in subdivision (1):

(A) holding a reasonable belief in good faith that the business does not have a year 2000 problem; or



(B) if clause (A) does not apply, adequately disclosing, before September 1, 1999, to persons likely to suffer damages from the year 2000 problem of the business that the business has a year 2000 problem.

Sec. 2. If a business is created after August 31, 1999, due diligence requires that the business comply with section 1 of this chapter as soon as practicable after the business is created.

Sec. 3. If a business enters into a new business relationship after August 31, 1999, due diligence requires that the business make the disclosures required under section 1(2)(B) of this chapter to each person involved in the new business relationship as soon as practicable after the business enters into the business relationship.

Sec. 4. If a business discovers facts after August 31, 1999, that indicate that the business has a year 2000 problem and the facts could not have been reasonably discovered before September 1, 1999, due diligence requires that the business comply with section 1 of this chapter as soon as practicable after the business discovers the facts.

Sec. 5. An individual who is a director or an officer of a business and who would otherwise be personally liable for the year 2000 problem of a business is not personally liable for damages resulting from the year 2000 problem if the business exercised due diligence in mitigating year 2000 liability.

SECTION 10. IC 34-30-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:

Chapter 21. Financial Institution and Creditor Liability; Year 2000 Problems

Sec. 1. Notwithstanding any liability imposed on a business by law, a lender, a secured or unsecured creditor, or a fiduciary is not liable under any law in connection with:

(1) the failure of a business to exercise due diligence to mitigate year 2000 liability; or

(2) the failure of a business to be year 2000 compliant; unless the lender, the fiduciary, or creditor has participated in the management of the business.

SECTION 11. IC 34-51-3-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 7.** A person may not recover an award of punitive damages in a civil action that arises from a year 2000 problem. The commencement or litigation of a cause of action for punitive damages described in this section shall



1 be treated as an action or defense that is frivolous, unreasonable,
2 or groundless for purposes of IC 34-52-1-1.

3 SECTION 12. IC 34-51-6 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JANUARY 1, 1999 (RETROACTIVE)]:

6 **Chapter 6. Compensatory Damages Arising From Year 2000**
7 **Problems**

8 **Sec. 1. This chapter applies to all civil actions based on fault,**
9 **contract, product liability, or another legal theory that:**

- 10 (1) are brought to recover damages for injury to a person,
11 death to a person, or harm to property; and
12 (2) arise from a year 2000 problem.

13 **Sec. 2. Except as provided in section 3 of this chapter, the**
14 **liability of a business that would otherwise be liable to another**
15 **person for a loss resulting from a year 2000 problem is limited to**
16 **compensatory damages for the pecuniary loss incurred by the**
17 **other person.**

18 **Sec. 3. (a) Except as provided in subsection (b), if:**

- 19 (1) a person entered into a contract with a business that is
20 liable for a loss resulting from a year 2000 problem;
21 (2) the contract provides an exclusive remedy for a year 2000
22 problem or otherwise limits the remedies or damages
23 available to the person for a year 2000 problem; and
24 (3) the contractual remedy is enforceable;

25 **the person may recover damages only as provided by the contract.**

26 **(b) A person that represents that the person:**

- 27 (1) is skilled in assessing whether another person is year 2000
28 compliant; or
29 (2) has a product or service that will make another person
30 year 2000 compliant;

31 **creates an express warranty on which the person to whom the**
32 **representation is made may rely. The person making the**
33 **representation may not exclude, modify, or disclaim the warranty**
34 **described in this section.**

35 **Sec. 4. Compensatory damages awarded under section 2 of this**
36 **chapter shall be reduced by the amount of damages that the**
37 **plaintiff reasonably could have avoided as a result of a disclosure**
38 **made in conformity with IC 34-30-20-1.**

39 SECTION 13. IC 34-57-5 IS ADDED TO THE INDIANA CODE
40 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
41 JANUARY 1, 1999 (RETROACTIVE)]:

42 **Chapter 5. Arbitration of Year 2000 Problems**



1 **Sec. 1. This chapter applies to a dispute involving a year 2000**
 2 **problem if:**

3 (1) a business and a person affected by a year 2000 problem
 4 have not entered into an agreement governing the arbitration
 5 of disputes related to a year 2000 problem; and

6 (2) the persons described in subdivision (1) are not parties to
 7 a civil proceeding that has been filed in a court related to a
 8 year 2000 problem.

9 **Sec. 2. A person may offer to submit a dispute to arbitration**
 10 **under IC 34-57-1 and IC 34-57-2. An offer must specify the**
 11 **maximum amount of damages that may be awarded in the**
 12 **arbitration proceeding.**

13 **Sec. 3. A person that makes an offer under section 2 of this**
 14 **chapter is entitled to receive an award in the amount of the costs**
 15 **and reasonable attorney's fees incurred by the person in a**
 16 **subsequent civil proceeding from a person rejecting the offer if:**

17 (1) the person rejecting the offer is a defendant and a
 18 judgment is entered against the defendant that exceeds the
 19 maximum amount specified in the person's offer to arbitrate;
 20 or

21 (2) the person rejecting the offer is a plaintiff and the plaintiff
 22 is not awarded a judgment against the person making the
 23 offer in an amount that exceeds the maximum amount
 24 specified in the person's offer to arbitrate.

25 **SECTION 14. IC 34-57-6 IS ADDED TO THE INDIANA CODE**
 26 **AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE**
 27 **JANUARY 1, 1999 (RETROACTIVE)]:**

28 **Chapter 6. Mediation of Year 2000 Problems**

29 **Sec. 1. This chapter applies to a civil proceeding involving a**
 30 **year 2000 problem.**

31 **Sec. 2. A court may submit a claim for damages to a mediator**
 32 **on its own motion or on the motion of any party to the proceeding.**
 33 **If the mediation reaches an impasse, the mediator shall file with**
 34 **the court the terms of the last best settlement offer submitted to the**
 35 **mediator by the plaintiff and the defendant. The offers of the**
 36 **parties shall be sealed. The offers may not be disclosed until all**
 37 **issues except responsibility for attorney's fees and costs are**
 38 **resolved.**

39 **Sec. 3. A person making a settlement offer is entitled to receive**
 40 **an award from a person rejecting the offer in the amount of the**
 41 **costs and reasonable attorney's fees incurred by the person if:**

42 (1) the person rejecting the offer is a plaintiff and the plaintiff

C
o
p
y



1 was not awarded damages in an amount that exceeds
2 seventy-five percent (75%) of the amount of a defendant's last
3 best offer submitted to the mediator; or

4 (2) the person rejecting the offer is a defendant and a
5 judgment for damages was awarded against the defendant in
6 an amount that exceeds one hundred and twenty-five percent
7 (125%) of the plaintiff's last best offer submitted to the
8 mediator.

9 SECTION 15. [EFFECTIVE JANUARY 1, 1999
10 (RETROACTIVE)] IC 24-1-6, IC 34-24.5, IC 34-30-20,
11 IC 34-51-3-7, IC 34-51-6, IC 34-57-5, and IC 34-57-6, all as added
12 by this act, apply to a cause of action regardless of when the cause
13 of action accrued.

14 SECTION 16. An emergency is declared for this act.

C
o
p
y

